

*Sala Naambwe and Yvette Nimenya v.  
Smithfield Foods, Inc.*

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Gary Loger  
May 31, 2018



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<p style="text-align: right;">Page 5</p> <p>1 catch myself too.</p> <p>2 The other thing is that we need to make sure that</p> <p>3 we make verbal answers. I caught myself yesterday with</p> <p>4 some people nodding, I knew that that was a yes, but it</p> <p>5 won't reflect on our record if we don't do it. So if</p> <p>6 I'm prompting you or Andrea is prompting you, it's</p> <p>7 probably for that reason.</p> <p>8 If there is an objection, unless you are</p> <p>9 specifically instructed not to answer, you do need to</p> <p>10 continue with your answer. The judge will rule on</p> <p>11 those objections later, not today, unless we call him.</p> <p>12 And, finally, I want to know if there's any reason</p> <p>13 that you can't medically or physically accurately</p> <p>14 remember today.</p> <p>15 A No.</p> <p>16 Q Because you are under oath. And one of my first</p> <p>17 questions for you is what it means to you when you are</p> <p>18 under oath.</p> <p>19 A You tell the truth, the whole truth, and nothing but</p> <p>20 the truth.</p> <p>21 Q Very good.</p> <p>22 In terms of preparation for your deposition today,</p> <p>23 can you tell me what you did?</p> <p>24 A I came here, me and Andrea spoke for a little bit.</p> <p>25 Q I don't need to know anything you talked to your lawyer</p>	<p style="text-align: right;">Page 7</p> <p>1 in my hometown. After that, I joined the Navy. I was</p> <p>2 in the Navy for four years active.</p> <p>3 Q Thank you for your service.</p> <p>4 A After I got out of the Navy, I worked in a sheet metal</p> <p>5 shop for about a year, and then I got a job with Iowa</p> <p>6 Beef Processors. I was with them for 15 years, and the</p> <p>7 plant I was working at closed down and Morrell's</p> <p>8 offered me a job. I took it.</p> <p>9 Q So what year did you start at Morrell's?</p> <p>10 A 1998.</p> <p>11 Q I was trying to figure out what year Morrell's became</p> <p>12 Smithfield. Do you know that?</p> <p>13 A Maybe two years ago.</p> <p>14 Q So it's just kind of merged from John Morrell's into</p> <p>15 Smithfield Foods?</p> <p>16 A Right, Smithfield bought the brand, I believe.</p> <p>17 Q What is the difference between John Morrell's policy</p> <p>18 and Smithfield Foods' policy in your experience?</p> <p>19 A Well, I believe Smithfield has a Smithfield One policy,</p> <p>20 which they would like all plants to get on the same</p> <p>21 page, and I don't think there's really much difference.</p> <p>22 Q So all of the policies and procedures at all of the</p> <p>23 Smithfield Foods plants are supposed to be the same?</p> <p>24 A I believe that's what they're striving for.</p> <p>25 Q And they call that Smithfield One?</p>
<p style="text-align: right;">Page 6</p> <p>1 about.</p> <p>2 Did you review any documents?</p> <p>3 A No.</p> <p>4 Q Did you prepare any documents about Sala and Yvette's</p> <p>5 case?</p> <p>6 A I did not.</p> <p>7 Q How did you learn about Sala and Yvette's case?</p> <p>8 A Probably through HR.</p> <p>9 Q Did you see it posted on the bulletin board at work?</p> <p>10 A No.</p> <p>11 Q Did you know -- what is the rule about posting on the</p> <p>12 Smithfield Foods bulletin boards?</p> <p>13 A What is the rule?</p> <p>14 Q Yeah. Does it have to be management approved?</p> <p>15 A I would imagine it does.</p> <p>16 Q Just so I have some background information -- these are</p> <p>17 the easy things -- how old are you?</p> <p>18 A I'm 59.</p> <p>19 Q Could you just overview your educational background for</p> <p>20 me.</p> <p>21 A 12th grade, high school.</p> <p>22 Q And same thing with your work history after you entered</p> <p>23 the workforce, if you could just give me a general</p> <p>24 overview of where you've worked.</p> <p>25 A After high school, let's see, I worked a couple years</p>	<p style="text-align: right;">Page 8</p> <p>1 A Yeah.</p> <p>2 Q In terms of your own progression through the ranks --</p> <p>3 because you're a manager at Smithfield, right?</p> <p>4 A Correct.</p> <p>5 Q Can you just kind of march me through your progression</p> <p>6 at John Morrell and now Smithfield in terms of job</p> <p>7 positions?</p> <p>8 A I've always been a production manager, started as one.</p> <p>9 Q Did you have training to be a John Morrell's manager?</p> <p>10 A I have had training as a manager, yes.</p> <p>11 Q Can you tell me what that consists of?</p> <p>12 A It wasn't with this company. It was with the company I</p> <p>13 was with before.</p> <p>14 Q At IBP?</p> <p>15 A Right.</p> <p>16 Q So to be a manager at John Morrell, they didn't sit</p> <p>17 down and have you go through policies and procedures?</p> <p>18 A Throughout my career, yes. Yes. It's a break-in</p> <p>19 period, you know. They just didn't -- you know.</p> <p>20 Q They hired you with some managerial experience --</p> <p>21 A Correct.</p> <p>22 Q -- and just expected you to hit the ground running, so</p> <p>23 to speak?</p> <p>24 A They would put me in positions and train me on that</p> <p>25 position, correct, as far as the job goes.</p>



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<p style="text-align: right;">Page 9</p> <p>1 Q How about as -- when Smithfield took over, did you have</p> <p>2 any training about Smithfield policies and procedures?</p> <p>3 A Specifically Smithfield?</p> <p>4 Q Yeah.</p> <p>5 A I believe the policies were very similar. I can't say</p> <p>6 that there was a Smithfield policy, you know. The</p> <p>7 policy at the plant has always been pretty much the</p> <p>8 same, all the policies.</p> <p>9 Q All right. Well, one of the things I wanted to ask</p> <p>10 you -- and this has been previously marked as</p> <p>11 <u>Exhibit 3</u> --</p> <p>12 A Correct.</p> <p>13 Q -- the code of conduct and ethics at Smithfield.</p> <p>14 Have you had any specific training on your code of</p> <p>15 conduct and ethics as a Smithfield manager?</p> <p>16 A Yes. We have to sign off on it. What's in here is our</p> <p>17 policy.</p> <p>18 Q And so when Smithfield took over -- how important is</p> <p>19 this code of conduct and ethics in terms of Smithfield</p> <p>20 policy for you as a manager?</p> <p>21 A It's very important. I mean, it is our job.</p> <p>22 Q Right. And I see in here that it is -- your CEO, is</p> <p>23 that still Ken Sullivan?</p> <p>24 A Yes, as far as I know.</p> <p>25 Q They say, "The principles and examples contained in</p>	<p style="text-align: right;">Page 11</p> <p>1 A Always treat people with respect.</p> <p>2 Q As a manager, are you expected to be an example of</p> <p>3 that?</p> <p>4 A Absolutely.</p> <p>5 Q Is that a key part of your job duty?</p> <p>6 A Yes, it's a key part of everybody's -- it's everybody's</p> <p>7 responsibility.</p> <p>8 Q And is exemplifying doing the right thing a responsibility</p> <p>9 that you have as a Smithfield manager?</p> <p>10 A Yes.</p> <p>11 Q Is enforcing the Speak Up program of the code of</p> <p>12 conduct, is that one of your primary responsibilities</p> <p>13 as a manager?</p> <p>14 A The Speak Up part is -- yes, we want people to speak</p> <p>15 up, okay, but we can't -- we can't force them. If they</p> <p>16 have any kind of problem, speak up and we'll deal with</p> <p>17 it.</p> <p>18 Q And does the company have an open door policy for</p> <p>19 employees to come and report any concerns about ethical</p> <p>20 or rules violation?</p> <p>21 A Yes.</p> <p>22 Q And is that what your training is?</p> <p>23 A I believe that's part of it.</p> <p>24 Q Could you just describe for me what you understand</p> <p>25 employees are told about Speak Up as a program?</p>
<p style="text-align: right;">Page 10</p> <p>1 this code reflect laws and regulations that apply to</p> <p>2 our business."</p> <p>3 Is that true? Is that your training?</p> <p>4 A If that's what it says, yes.</p> <p>5 Q All employees are asked to sign a statement that</p> <p>6 they've read the Smithfield code of conduct and ethics</p> <p>7 and will act in full compliance with the code.</p> <p>8 Is that what Smithfield employees are trained?</p> <p>9 A Yes, it is, as far as I know.</p> <p>10 Q Your obligation to do the right thing, however, does</p> <p>11 not end with reading the code.</p> <p>12 Is that your training at Smithfield?</p> <p>13 A Do the right thing is what we have to do.</p> <p>14 Q And so what does -- do the right thing, when I see that</p> <p>15 in the code of conduct, what does that mean?</p> <p>16 A I would say exactly what it says, do the right thing.</p> <p>17 Q Is there any training --</p> <p>18 A Yes, we do have training.</p> <p>19 Q So what is your training about how to do the right</p> <p>20 thing as a manager?</p> <p>21 A Well, we have annual training on harassment,</p> <p>22 discrimination, respect -- be respectful to other</p> <p>23 employees and other -- everybody.</p> <p>24 Q So what is the Smithfield training about being</p> <p>25 respectful to others in the Smithfield workplace.</p>	<p style="text-align: right;">Page 12</p> <p>1 Because -- let me ask this question: Speak Up -- and</p> <p>2 it's all in all caps with an exclamation point -- is an</p> <p>3 actual company policy, right?</p> <p>4 MS. CALEM: Object to the form. You can answer.</p> <p>5 THE WITNESS: Yeah, I believe that is a -- yeah, I</p> <p>6 believe that. It's in the handbook.</p> <p>7 BY MS. POCHOP:</p> <p>8 Q And so when employees are told that they have a</p> <p>9 responsibility to speak up, what are you telling them</p> <p>10 their responsibility is?</p> <p>11 A If they have a problem or a complaint or if they see</p> <p>12 something unsafe, speak up because it's for everybody's</p> <p>13 good, especially in a safety situation, you know.</p> <p>14 Q And what are employees told about speaking up about</p> <p>15 seeing a violation of the company's discrimination</p> <p>16 policy?</p> <p>17 MS. CALEM: Object to the form.</p> <p>18 I'm just going to say objections occasionally.</p> <p>19 You just keep going.</p> <p>20 THE WITNESS: Oh, okay. All right.</p> <p>21 What -- can you repeat that, please.</p> <p>22 BY MS. POCHOP:</p> <p>23 Q And we'll give a little break for her to make her</p> <p>24 objection, and then you can answer. Okay?</p> <p>25 A Okay.</p>

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<p style="text-align: right;">Page 13</p> <p>1 Q What are employees told their responsibility to speak 2 up is when they observe violations of the company's 3 discrimination policy? 4 A Well, I believe in their training it is recommended 5 that they speak up, you know. 6 Q What about in your training? 7 A It's the same. 8 Q Is it required? 9 A In my case, I would say, yes, I have to act on it. If 10 anybody comes with any kind of complaint in that 11 direction, yes, we take action immediately. 12 Q Is, quote/unquote, speak up the term used to describe 13 the right and responsibility of every employee to tell 14 management about any behavior that doesn't meet the 15 standards outlined in the code of conduct? 16 A I don't believe you can force somebody to come forward, 17 but it is sure encouraged. 18 Q Yeah. 19 A Yeah. 20 Q And are employees told that they're encouraged to 21 report any violation of the code of conduct? 22 MS. CALEM: Object to the form of the question. 23 THE WITNESS: Yes, I believe they're -- yes, they 24 are told that. 25</p>	<p style="text-align: right;">Page 15</p> <p>1 conduct? 2 A Yes. 3 Q Abusive language, is that -- 4 A Yes, it is. 5 Q -- a violation? 6 Intimidating behavior? 7 A Yes, it is. 8 Q Disparaging comments about a coworker, are those a 9 violation of -- 10 A Yes, it could be. 11 Q Racial, ethnic, religious or sexual slurs or jokes, are 12 those violations? 13 A Yes. 14 Q And if an employee hears something -- hears somebody 15 making a sexual remark to another coworker or making a 16 sexual -- or making a racial slur to somebody or about 17 a group of people in your workplace, what is -- the 18 employee who hears that, what is their responsibility 19 under the policy? 20 A Their responsibility would be to report it. 21 Q And how are they supposed to report it? 22 A They could report to their immediate supervisor. They 23 could report to their supervisor. They could go to HR. 24 Q Is there any procedure that they're instructed that 25 they must follow to report harassment?</p>
<p style="text-align: right;">Page 14</p> <p>1 BY MS. POCHOP: 2 Q Can you tell me what the company's diversity and equal 3 employment policy is according to your Smithfield 4 training? 5 A I believe it is you cannot be not hired because of your 6 race, your place of origin, disabilities, anything 7 involved in that -- you can't discriminate against 8 somebody for employment. 9 Q And what is your understanding of what employees are 10 instructed to do if they feel that they have been 11 discriminated against or if they witness 12 discrimination? Is it different? 13 A Come forward, report it. 14 Q Is that an employee responsibility? 15 MS. CALEM: Object to the form of the question. 16 THE WITNESS: I believe it is their 17 responsibility, yes. 18 BY MS. POCHOP: 19 Q Do employees at Smithfield have the right to work free 20 from harassment? 21 A Yes, they do. 22 Q Under Smithfield's policies, is derogatory or offensive 23 language a violation of policy? 24 A Yes. 25 Q Bullying, is that a violation of Smithfield's code of</p>	<p style="text-align: right;">Page 16</p> <p>1 MS. CALEM: Object to the form. 2 THE WITNESS: They should report to their 3 supervisor and start the chain of command, correct. 4 BY MS. POCHOP: 5 Q What if their supervisor is not available or they're 6 uncomfortable? What are Smithfield managers trained to 7 tell employees to do? 8 A They could go to the lead person. They could go to 9 their -- any supervisor. You could report it to any 10 supervisor or to human resources. 11 Q If you look at page 7 of Exhibit 3 -- 12 A Page 7? 13 Q Uh-huh. Are we on the -- 14 MS. CALEM: That's 9. 15 THE WITNESS: Oh, okay. 16 MS. POCHOP: It looks like this. 17 BY MS. POCHOP: 18 Q There are some examples that are offered in the 19 handbook just so employees get a sense of what the 20 Smithfield workplace is supposed to be like, right? 21 A Okay. 22 Q Have you ever read the handbook? Have you read this 23 yourself? 24 A I have gone over it. I don't remember anything 25 word-for-word, but...</p>



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<p style="text-align: right;">Page 17</p> <p>1 Q So this is familiar to you at least, right?</p> <p>2 A Yep.</p> <p>3 Q One of the top examples says, "My supervisor is</p> <p>4 constantly yelling at us and today even threatened</p> <p>5 someone on our team. I don't think any of us believe</p> <p>6 that our supervisor would actually carry out the</p> <p>7 threat, but it makes me uncomfortable. What should</p> <p>8 I do?"</p> <p>9 And what advice -- actually, it wouldn't really be</p> <p>10 advice, I guess. What does the handbook instruct</p> <p>11 employees that should happen if an employee -- if a</p> <p>12 manager is behaving that way?</p> <p>13 A The answer is, "Smithfield's work environment must be</p> <p>14 free from harassment, including intimidating language.</p> <p>15 If threatening language is used in your workplace,</p> <p>16 speak up using one of the resources listed in this</p> <p>17 code."</p> <p>18 Q It says -- it not only says it must be free from</p> <p>19 harassment, it says, "including intimidating language,"</p> <p>20 right?</p> <p>21 A Correct.</p> <p>22 Q And are you bound by -- and this is talking about a</p> <p>23 manager who is yelling at people and saying rude and</p> <p>24 intimidating things, right?</p> <p>25 A That's what it says.</p>	<p style="text-align: right;">Page 19</p> <p>1 procedures that are in this handbook?</p> <p>2 A Yes, I am.</p> <p>3 Q Are you required to enforce the policies in this</p> <p>4 handbook?</p> <p>5 A Yes, I am.</p> <p>6 Q And it's your responsibility as a manager to make sure</p> <p>7 that the department that you supervise runs in accord</p> <p>8 with the principles of Exhibits 3 and 2, right?</p> <p>9 A Correct.</p> <p>10 Q Can you tell me what the core values of the company are</p> <p>11 in terms of ethics at work?</p> <p>12 A Treat everybody with respect, don't harass anybody,</p> <p>13 don't discriminate against people.</p> <p>14 Q Are you supposed to have high ethical and legal</p> <p>15 standards in terms of the work environment that you are</p> <p>16 supervising at Smithfield Foods?</p> <p>17 A Yes.</p> <p>18 Q Is that your responsibility?</p> <p>19 A Yes.</p> <p>20 Q Are you expected to example high ethical and legal</p> <p>21 standards in the performance of your job duties?</p> <p>22 A Yes.</p> <p>23 Q When I look at <a href="#">Exhibit 2</a>, on page 6 of Exhibit 2, the</p> <p>24 company handbook, the very top -- I have it highlighted</p> <p>25 there for you. It says in the code, on nearly every</p>
<p style="text-align: right;">Page 18</p> <p>1 Q Would you agree that a manager who yells at employees</p> <p>2 and says rude and intimidating things is in violation</p> <p>3 of Smithfield's fundamental code of ethics?</p> <p>4 A I would.</p> <p>5 Q And that should not be tolerated in the Smithfield</p> <p>6 workplace, right?</p> <p>7 A Correct.</p> <p>8 Q In addition, there's some other rules that you're</p> <p>9 required to comply with at Smithfield, right, as a</p> <p>10 manager?</p> <p>11 A There are rules, correct.</p> <p>12 Q And, in fact, it's your obligation not just to comply</p> <p>13 with these, but you're supposed to enforce the code of</p> <p>14 conduct?</p> <p>15 A Correct.</p> <p>16 Q You're supposed to make sure that the people that you</p> <p>17 supervise are following it?</p> <p>18 MS. CALEM: Object to the form.</p> <p>19 THE WITNESS: Yes.</p> <p>20 BY MS. POCHOP:</p> <p>21 Q I'd also like to ask you to take a look at -- this is a</p> <p>22 copy of the Smithfield handbook. It's been marked as</p> <p>23 <a href="#">Exhibit 2</a>. Are you familiar with it?</p> <p>24 A Yes.</p> <p>25 Q Are you required to comply with the policies and</p>	<p style="text-align: right;">Page 20</p> <p>1 page, you'll see the words speak up. We are doing</p> <p>2 everything we can to make speaking up easy to do and</p> <p>3 have provided various ways for anyone to raise a</p> <p>4 question or a concern. You can even make an anonymous</p> <p>5 report using the ethics hotline. You will not be</p> <p>6 retaliated against for raising a question or a concern.</p> <p>7 Is this accurate about what Smithfield Foods'</p> <p>8 actual policy is for employees who want to report any</p> <p>9 question or concern they have about workplace behavior?</p> <p>10 A Yes, it is.</p> <p>11 Q With regard to -- as a manager at Smithfield, what are</p> <p>12 you doing to do everything you can to make speaking up</p> <p>13 easy to do?</p> <p>14 A Well, we encourage it. We ask them to do that.</p> <p>15 Q Give me an example of how you -- like in the</p> <p>16 performance of your job duties this month, how have you</p> <p>17 encouraged and done everything you can to have</p> <p>18 employees feel free to speak up about questions or</p> <p>19 concerns they have about Smithfield policies?</p> <p>20 A I'd say we have at safety meetings, sometimes we have</p> <p>21 during our -- we have the annual training, and we bring</p> <p>22 this to their attention.</p> <p>23 Q And is reporting ethical issues and concerns an</p> <p>24 integral part of every Smithfield employee's job</p> <p>25 duties?</p>

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<p style="text-align: right;">Page 21</p> <p>1 MS. CALEM: Object to the form.</p> <p>2 THE WITNESS: I would think it is, yes.</p> <p>3 BY MS. POCHOP:</p> <p>4 Q Okay. And if you look at page 6, it actually says that</p> <p>5 down in the section F there, the last sentence of the</p> <p>6 first paragraph.</p> <p>7 Did you know that was -- that employees were told</p> <p>8 it's an integral part of their responsibilities to</p> <p>9 report problems or violations?</p> <p>10 A Correct.</p> <p>11 Q They're supposed to first report to their manager?</p> <p>12 A Yes.</p> <p>13 Q What if they have a problem with their manager?</p> <p>14 A They could report to his manager.</p> <p>15 Q And what is the follow-ups, do you know?</p> <p>16 A Depends on the situation, I would imagine.</p> <p>17 Q Do you know what reprisal means or retaliation means?</p> <p>18 A Yeah, if somebody would make a complaint about</p> <p>19 something or somebody, that they would be punished, in</p> <p>20 a way.</p> <p>21 Q And what is the company policy about protecting</p> <p>22 employees from retaliation?</p> <p>23 A Well, it's forbidden.</p> <p>24 Q And is that part of your training as a Smithfield</p> <p>25 manager?</p>	<p style="text-align: right;">Page 23</p> <p>1 Q And is that the training that every Smithfield manager</p> <p>2 receives as far as you know?</p> <p>3 A Yes.</p> <p>4 Q And how are you instructed that you would identify</p> <p>5 reprisal?</p> <p>6 A It could be a number of different things, I guess.</p> <p>7 Q And what are you, as a Smithfield manager, told you</p> <p>8 should do about -- you should tell your employees about</p> <p>9 when or if they should report an incident to human</p> <p>10 resources?</p> <p>11 A Excuse me?</p> <p>12 Q What do you, as a Smithfield manager, tell employees</p> <p>13 about what their right or obligation is to report</p> <p>14 incidents to human resources?</p> <p>15 A They have the right to do so.</p> <p>16 Q If you tell an employee that they should go to human</p> <p>17 resources and make a report to human resources, are</p> <p>18 they expected to do so?</p> <p>19 A Absolutely.</p> <p>20 Q I see that on page 8 of the policy handbook it says</p> <p>21 that your manager advises you about your start and end</p> <p>22 times and lunch times.</p> <p>23 Is there any specific policy that you're a --</p> <p>24 written policy that you're aware of that tells</p> <p>25 employees what their attendance and promptness is --</p>
<p style="text-align: right;">Page 22</p> <p>1 A Yes.</p> <p>2 Q Has every manager received training that says you're</p> <p>3 not supposed to retaliate if an employee makes a</p> <p>4 complaint about a policy?</p> <p>5 MS. CALEM: Object to the form. Go ahead.</p> <p>6 THE WITNESS: Yes.</p> <p>7 BY MS. POCHOP:</p> <p>8 Q In fact, I wanted to have you -- if you turn the page</p> <p>9 to page 7 of <u>Exhibit 2</u>, there's actually a restatement</p> <p>10 of the nonreprisal policy for the company on page 7,</p> <p>11 correct?</p> <p>12 A Yes, there is.</p> <p>13 Q And that policy, as written, says, quote, there will be</p> <p>14 no reprisal or retaliation against any person who</p> <p>15 reports health, safety, security, environmental,</p> <p>16 ethical problems or violations, right?</p> <p>17 A Correct.</p> <p>18 Q Is that the training that you receive as a Smithfield</p> <p>19 manager?</p> <p>20 A Yes.</p> <p>21 Q The policy further states, quote, the company will not</p> <p>22 tolerate acts of reprisal or retaliation by any of its</p> <p>23 employees and will take appropriate disciplinary action</p> <p>24 if it occurs, correct?</p> <p>25 A Correct.</p>	<p style="text-align: right;">Page 24</p> <p>1 their expectations are at work?</p> <p>2 A Yes. Everybody goes through orientation, and then once</p> <p>3 they're in the department, we do our own orientation,</p> <p>4 the department orientation. It's all spelled out to</p> <p>5 them then.</p> <p>6 Q During the department orientation, do you cover</p> <p>7 discrimination, bullying, and harassment again?</p> <p>8 A I don't know if we -- if that's specific in the</p> <p>9 department orientation or not, so I'm not -- I'm not</p> <p>10 positive. We talk about -- well, your attendance is</p> <p>11 brought up. Safety is the number one concern when we</p> <p>12 go through department orientation, the break times,</p> <p>13 what job they might be doing. I'm not sure if it's in</p> <p>14 the department orientation that we go through or not,</p> <p>15 but I'm sure it's covered in the third initial</p> <p>16 orientation.</p> <p>17 Q What is the Courage to Care policy at Smithfield Foods?</p> <p>18 A It deals a lot with safety. If you see anything</p> <p>19 unsafe, report it, because it's not only for the person</p> <p>20 that is doing something unsafe, it could get other</p> <p>21 people injured or worse. So...</p> <p>22 Q And in terms of behavior that could injure somebody, I</p> <p>23 mean, what are employees instructed that their</p> <p>24 responsibility is?</p> <p>25 A They are trained on their job, and if -- they're --</p>



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<p style="text-align: right;">Page 25</p> <p>1 they should not take shortcuts with safety.</p> <p>2 Q Are you allowed to do things that put your other</p> <p>3 coworkers at risk of injury?</p> <p>4 A No.</p> <p>5 Q That seems pretty obvious. I just needed to know what</p> <p>6 you as a manager tell your employees about -- for</p> <p>7 example, like, if you -- over in department 19, it</p> <p>8 sounds like there's, on the ham line, throwing or</p> <p>9 having hams come down to the next employee.</p> <p>10 Is it a violation of policy if somebody is</p> <p>11 intentionally pushing more hams than the people in the</p> <p>12 line below them can handle?</p> <p>13 A For the most part, the lines -- what line are you</p> <p>14 talking about specifically? I mean --</p> <p>15 Q Like the honey line.</p> <p>16 A The honey line?</p> <p>17 Q Yeah.</p> <p>18 A Where Yvette and Sala work?</p> <p>19 Q Right. Yeah, yeah.</p> <p>20 A It comes on a conveyor.</p> <p>21 Q Right. And if you're pushing -- if you're punching</p> <p>22 more of those hams on the conveyor than you can see the</p> <p>23 people below you that are standing there with the socks</p> <p>24 can catch, is that a violation of the safety policy?</p> <p>25 A It is something that we'd have to regulate --</p>	<p style="text-align: right;">Page 27</p> <p>1 do at work?</p> <p>2 A No. We're instructed not to touch people.</p> <p>3 Q Right. And what is the reason that you're instructed</p> <p>4 not to touch your employees?</p> <p>5 A I guess it's just not a good practice, you know.</p> <p>6 Q I mean, does Smithfield do any sort of explanation or</p> <p>7 training for managers about -- that assume that your</p> <p>8 employees might be sensitive or might not like being</p> <p>9 physically touched?</p> <p>10 A Correct. That's probably -- that's why, yeah.</p> <p>11 Q You're supposed to treat everybody --</p> <p>12 A Yeah.</p> <p>13 Q -- like they might be kind of fragile or --</p> <p>14 MS. CALEM: Object to the form.</p> <p>15 THE WITNESS: Well, I mean, it's just not a good</p> <p>16 idea.</p> <p>17 BY MS. POCHOP:</p> <p>18 Q You, yourself, are you a person who hollers at</p> <p>19 employees?</p> <p>20 A I raise my voice when I need to.</p> <p>21 Q Do you know that your employees think that you are</p> <p>22 constantly yelling at them?</p> <p>23 MS. CALEM: Object to the form.</p> <p>24 THE WITNESS: I've heard that.</p> <p>25</p>
<p style="text-align: right;">Page 26</p> <p>1 Q Right.</p> <p>2 A -- as far as how fast they're letting the hams come</p> <p>3 down.</p> <p>4 Q Right.</p> <p>5 A They're not actually getting pushed down. They're</p> <p>6 coming down a conveyor. There should be a certain</p> <p>7 space in between them.</p> <p>8 Q I mean, it is possible, if an employee is mad at</p> <p>9 another employee, that they can kind of punch those</p> <p>10 hams, especially if there's two of them working, that</p> <p>11 they can send them down quicker than the people</p> <p>12 catching them in the nets or socks can do, right?</p> <p>13 A It's possible, yes.</p> <p>14 Q And is that a job for a supervisor to make sure that</p> <p>15 that's not happening?</p> <p>16 A If it's brought to their attention. And, you know, if</p> <p>17 it's coming down too fast, there's a shutoff button.</p> <p>18 Shut the line off, get ahold of your manager, tell</p> <p>19 them, you know -- or tell the person at the end of the</p> <p>20 line, hey, you know, they're coming too fast.</p> <p>21 Q In terms of just another workplace policy, I want to</p> <p>22 make sure I understand what the training is at</p> <p>23 Smithfield Foods.</p> <p>24 Are you allowed to push or shove or poke or tap</p> <p>25 your employees to get them to do what you want them to</p>	<p style="text-align: right;">Page 28</p> <p>1 BY MS. POCHOP:</p> <p>2 Q That's a violation of the code of business conduct and</p> <p>3 ethics, right?</p> <p>4 A Not if you're raising your voice so they can hear you.</p> <p>5 Q Do you swear when you raise your voice so employees can</p> <p>6 hear you?</p> <p>7 A I have before, yes.</p> <p>8 Q Do you tell people to get the fuck out of the way?</p> <p>9 A I have used the F-word.</p> <p>10 Q How often in an average week do you raise your voice</p> <p>11 and use the F-word to get your employees to do what you</p> <p>12 want?</p> <p>13 A I do not use the F-word anymore. I've been warned not</p> <p>14 to do that.</p> <p>15 Q And tell me about that.</p> <p>16 A There was a complaint about it, I'm sure, and my</p> <p>17 manager told me don't do that anymore.</p> <p>18 Q Who brought the complaint against you?</p> <p>19 A I don't recall.</p> <p>20 Q When was that?</p> <p>21 A I don't recall, but I was just told, hey, watch your</p> <p>22 language, you know.</p> <p>23 Q I mean, was it last year? This year?</p> <p>24 A Oh, it's been, oh, a couple years.</p> <p>25 Q So your testimony is you haven't used an F-word or</p>



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<p style="text-align: right;">Page 29</p> <p>1 hollered at employees with profanity for a couple of</p> <p>2 years?</p> <p>3 A Correct.</p> <p>4 Q And that's because you had a disciplinary action?</p> <p>5 A It wasn't a disciplinary action. It was a warning.</p> <p>6 Q And was it a written warning or did you just get pulled</p> <p>7 aside --</p> <p>8 A Right, I just got pulled aside.</p> <p>9 Q And who pulled you aside and said, don't talk like that</p> <p>10 anymore?</p> <p>11 A Well, I believe it was my supervisor, Dave Hillberg.</p> <p>12 Q But you were actually violating the Smithfield code of</p> <p>13 conduct by hollering and using disrespectful language</p> <p>14 at the same time, right?</p> <p>15 A I was.</p> <p>16 Q In fact, you were violating, basically, the example</p> <p>17 that employees are told that they should report?</p> <p>18 MS. CALEM: Object to form.</p> <p>19 THE WITNESS: Yes. Yes, I was.</p> <p>20 BY MS. POCHOP:</p> <p>21 Q And yet you did not get any sort of formal disciplinary</p> <p>22 action?</p> <p>23 A I was told to not do it anymore.</p> <p>24 Q Right. But I'm asking, did you get a disciplinary</p> <p>25 action for violating a written rule?</p>	<p style="text-align: right;">Page 31</p> <p>1 BY MS. POCHOP:</p> <p>2 Q Do you know why employees working in your department</p> <p>3 would feel afraid for their job if they reported racial</p> <p>4 discrimination?</p> <p>5 MS. CALEM: Object to the form.</p> <p>6 THE WITNESS: No, I do not.</p> <p>7 BY MS. POCHOP:</p> <p>8 Q Have you, yourself, heard employees that you supervise</p> <p>9 speaking to each other in sexual terms that are</p> <p>10 inappropriate under the code of conduct?</p> <p>11 A No, I have not.</p> <p>12 Q Have you heard employees use racial jokes or slurs with</p> <p>13 each other?</p> <p>14 A No, I have not.</p> <p>15 Q How do you, as a manager, go about disciplining</p> <p>16 employees?</p> <p>17 A It would depend on the situation. If somebody's having</p> <p>18 a spat on a line or arguing back and forth --</p> <p>19 Q Yep.</p> <p>20 A -- I would go over and ask them what's going on, find</p> <p>21 out what the situation is, and tell them we don't need</p> <p>22 this here, we're here to work.</p> <p>23 Q Does that type of -- when people are having a spat on</p> <p>24 the line, are you authorized to issue a disciplinary</p> <p>25 warning?</p>
<p style="text-align: right;">Page 30</p> <p>1 A I don't believe anything was put in my file about it.</p> <p>2 Q Have you ever disciplined another employee for using</p> <p>3 foul language or hollering at a coworker?</p> <p>4 A I have probably interjected into in a situation and</p> <p>5 told them not to --</p> <p>6 Q And did you discipline an employee for that?</p> <p>7 A I can't recall if I have or not.</p> <p>8 Q I mean, I'm curious, because I want to know if you've</p> <p>9 disciplined employees for behavior that you, yourself,</p> <p>10 engaged in without discipline?</p> <p>11 MS. CALEM: Object to the form.</p> <p>12 THE WITNESS: I don't recall if I have or not.</p> <p>13 BY MS. POCHOP:</p> <p>14 Q How would you rate your performance as a manager in</p> <p>15 terms of encouraging employees to speak up?</p> <p>16 MS. CALEM: Object to the form.</p> <p>17 THE WITNESS: Well, I think, you know, we</p> <p>18 encourage it. I can't force anybody to. I would sure</p> <p>19 appreciate it if they did, you know, in any instance.</p> <p>20 BY MS. POCHOP:</p> <p>21 Q Do you know why employees in your -- in the department</p> <p>22 that you manage would feel afraid to report sexual</p> <p>23 harassment, for example?</p> <p>24 MS. CALEM: Object to the form of the question.</p> <p>25 THE WITNESS: No, I do not.</p>	<p style="text-align: right;">Page 32</p> <p>1 A Yes, I am, but it depends on the severity of it.</p> <p>2 Q So if it's -- like, what would be really severe</p> <p>3 where -- give me an example that you can think of where</p> <p>4 it's a severe spat between coworkers.</p> <p>5 A Well, if anything physical happens, of course --</p> <p>6 Q Right.</p> <p>7 A -- that would be severe.</p> <p>8 Q Right. Because there's supposed to be, like, a zero</p> <p>9 tolerance for physical threats and violence at work,</p> <p>10 right?</p> <p>11 A Right.</p> <p>12 Q And so what would your procedures tell you, as a</p> <p>13 manager, you should do if you witness a severe policy</p> <p>14 violation or an obvious one?</p> <p>15 A Well, the parties involved would be brought to the</p> <p>16 office first and we would find out what exactly started</p> <p>17 it and how we're going to resolve it, and if I can't</p> <p>18 resolve it, we would take it to human resources.</p> <p>19 Q If, like, you see somebody physically touch another</p> <p>20 person in a threatening or intimidating way, can you</p> <p>21 issue a discipline right there in your office?</p> <p>22 A Yes, I can.</p> <p>23 Q And every supervisor has the authority to do that if</p> <p>24 they see an obvious policy violation?</p> <p>25 MS. CALEM: Object to the form.</p>



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<p style="text-align: right;">Page 33</p> <p>1 THE WITNESS: Yes, they do.</p> <p>2 BY MS. POCHOP:</p> <p>3 Q And what would be the reason why you would need to</p> <p>4 refer it up to HR?</p> <p>5 A If it's just a verbal confrontation or something, a lot</p> <p>6 of times -- most of the time we're going to resolve</p> <p>7 that at the department level. Anything more than that,</p> <p>8 we're required to take it to HR and report it to HR.</p> <p>9 Q So can we agree that an employee who calls a person of</p> <p>10 color who's a coworker a monkey -- kind of ripped from</p> <p>11 the headlines, I guess -- and that's an obvious racist</p> <p>12 remark, right?</p> <p>13 A Correct.</p> <p>14 Q It's an obvious violation of the code of conduct?</p> <p>15 A Yes.</p> <p>16 Q How about telling an employee to speak English? Is</p> <p>17 that a violation of the code of conduct?</p> <p>18 A I believe it would be, yes.</p> <p>19 Q Okay. And that's because one of the things at</p> <p>20 Smithfield Foods is that managers are instructed that</p> <p>21 they're to encourage the diversity of the workplace,</p> <p>22 correct?</p> <p>23 A Correct.</p> <p>24 Q And, in fact, Smithfield has a very diverse</p> <p>25 workplace --</p>	<p style="text-align: right;">Page 35</p> <p>1 other employees, is that a violation of Smithfield's</p> <p>2 code of conduct?</p> <p>3 A Yes, it is.</p> <p>4 Q Are all of those things obvious violations that you</p> <p>5 would have authority, as a Smithfield manager, to issue</p> <p>6 a discipline if you witnessed them?</p> <p>7 A Yes, it would.</p> <p>8 Q And what if you didn't witness them but the employee</p> <p>9 admitted that they had engaged in that behavior? Would</p> <p>10 you have the authority to issue a discipline to that</p> <p>11 employee?</p> <p>12 A Yes, I would.</p> <p>13 Q Are you allowed, as a Smithfield manager, to tell other</p> <p>14 Smithfield employees about disciplines issued to their</p> <p>15 coworkers?</p> <p>16 A No.</p> <p>17 Q And why not?</p> <p>18 A It's none of their business. It's their -- you know.</p> <p>19 Q I see references in the code of conduct and the</p> <p>20 policies and procedures about maintaining</p> <p>21 confidentiality and a kind of need-to-know basis.</p> <p>22 Is there anything that you are instructed as a</p> <p>23 Smithfield manager about when it is appropriate to tell</p> <p>24 a coworker about another coworker's disciplinary</p> <p>25 experience?</p>
<p style="text-align: right;">Page 34</p> <p>1 A Yes.</p> <p>2 Q -- in terms of its working staff, at least, right?</p> <p>3 A Yes, they do.</p> <p>4 Q How would you describe the diversity among Smithfield</p> <p>5 management?</p> <p>6 A It's quite diverse.</p> <p>7 Q So even at the management level you have people who</p> <p>8 might be English second language?</p> <p>9 A Yes, we do.</p> <p>10 Q And there's no English-only requirement at Smithfield?</p> <p>11 A For managers, there could be. I'm not -- I'm not</p> <p>12 positive about that.</p> <p>13 Q Okay. Well, as long as you've been there and as many</p> <p>14 trainings as you've sat through, have you ever heard</p> <p>15 any -- have you ever had any training about</p> <p>16 English-only?</p> <p>17 A No, not that I recall.</p> <p>18 Q Would telling somebody to go back to your country be a</p> <p>19 violation of Smithfield's code of conduct and ethics?</p> <p>20 A Yes, it would be.</p> <p>21 Q Would telling somebody, get this fucking thing done, or</p> <p>22 do some fucking thing, in an intimidating voice, is</p> <p>23 that a violation of Smithfield's code of conduct?</p> <p>24 A Yes, it is.</p> <p>25 Q Is acting out sexually in the workplace in front of</p>	<p style="text-align: right;">Page 36</p> <p>1 A No, you shouldn't -- you shouldn't talk about somebody</p> <p>2 else's file or their behavior.</p> <p>3 Q So how long have you supervised Sala and Yvette?</p> <p>4 A I would say they came to the department in 2015 maybe.</p> <p>5 I don't recall the year exactly.</p> <p>6 Q Sometime around there?</p> <p>7 A Yeah, two, two and a half years.</p> <p>8 Q And I want to -- and maybe you've covered it and I just</p> <p>9 kind of lost track here.</p> <p>10 But in terms of your departments that you've</p> <p>11 managed, can you kind of tell me your time frame about</p> <p>12 the departments that you have managed at John Morrell's</p> <p>13 or Smithfield? And just in general.</p> <p>14 A I started out in department 19. I've been in</p> <p>15 department 19 most of my career there but in different</p> <p>16 capacities. Basically, smoked meat wash is where --</p> <p>17 it's a stuffing room, basically, is what you call it.</p> <p>18 You're hanging -- you're putting up hams for the</p> <p>19 smokehouses to cook, to go to cook.</p> <p>20 Q Is there something you have to do in department 19</p> <p>21 where you have to spray some black stuff on a ham?</p> <p>22 A Yes, there is.</p> <p>23 Q What is that called?</p> <p>24 A It's a product for Arby's. It's a caramel color you</p> <p>25 put on it, on the ham -- on the muscle.</p>

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<p style="text-align: right;">Page 37</p> <p>1 Q What is that product? I mean, what's the name of that 2 job duty? 3 A Spraying the Arby's. 4 Q Okay. Spraying the Arby's. 5 Is there somebody who routinely does that job? 6 A Various people do it. 7 Q How do you get assigned to spray the Arby's? 8 A How do you get assigned to it? 9 Q Yeah. 10 A It would depend on what time of day it is and who's 11 available to do it. 12 Q Do you have to have any training to do it? 13 A No, you really don't. 14 Q Did you assign Sala to go spray the Arby's? 15 A One time I did, yes. 16 Q So one time in the entire time that she's worked at 17 Smithfield she got assigned to go spray the Arby's? 18 A Yes, she did. 19 Q And how did you select her as the person that would be 20 assigned to this job? 21 A Well, she had an option of doing one job -- there was 22 two -- she was on open work, and there was two open 23 work jobs available, and she refused to do the other 24 job. 25 Q Why did she refuse to do the other job?</p>	<p style="text-align: right;">Page 39</p> <p>1 Q Were you the supervisor for them in department 19 that 2 day? 3 A No, I wasn't. 4 Q I wanted to ask, like, in terms of department 19, how 5 many subdepartments are there? I mean, there's the 6 spraying the Arby's thing, there's the honey line, 7 the -- 8 A There are five different lines. 9 Q And so I can understand how it works, can you explain 10 how department 19 is set up physically with those five 11 lines? 12 A At one end of the department you have -- it's called 13 the honey line. It's a bone-in line. You hang bone-in 14 hams. Okay? There are actually two bone-in lines. If 15 one breaks down, you can use the other one or use it 16 for different products. 17 And then there is -- it's called the 4204 line. 18 That's an auto stuffer. You're stuffing muscles into a 19 casing, and they get put on various types of trees and 20 sent to the smokehouses. 21 And then you have what's called the hand line, and 22 you're physically hand stuffing or -- you can 23 physically hand stuff them or there are machines 24 that -- but you're physically putting the meat in the 25 machine, okay, and stuffing it into a net and then</p>
<p style="text-align: right;">Page 38</p> <p>1 A She did not want to do it. 2 Q Why? 3 MS. CALEM: Object to the form. 4 THE WITNESS: I'm not sure, but I asked her over 5 and over, I said, this job's available and this job, 6 the two open work jobs today. 7 BY MS. POCHOP: 8 Q Did you say something like, I'm sending you to do this 9 shit or get covered with this shit? 10 A I told her, you're not going to -- I said, if you're -- 11 if you're refusing to do this job, this is the job 12 you're going to do and you're not going to like that 13 shit. 14 That's what I told her. But she still refused, so 15 that's the job she got. 16 Q So during the time that you have supervised Sala, were 17 you her supervisor at the time -- let's call it the 18 Scott Genzler incident. You know what I'm talking 19 about, right? 20 A Yes, I do. 21 Q That's when Scott made racist remarks to Sala and 22 Yvette -- 23 A Yes. 24 Q -- in the presence of other coworkers? 25 A As far as I know, yes.</p>	<p style="text-align: right;">Page 40</p> <p>1 hanging that on a tree and off to the smokehouse it 2 goes after it gets scaled up. 3 And then there is the Great Bend line, which -- 4 the name comes from Great Bend, Kansas. That's where 5 they used to do this product and that plant closed down 6 and they brought that here, so they call it the Great 7 Bend line. And that is hand stuffing, and you're 8 literally hand stuffing muscles into a net. 9 And we have a deli line also. We're doing deli 10 meat for a different department. We're stuffing it, 11 putting it on racks, hauling it to an elevator, going 12 to another floor for cook and further process. 13 Q Is there, like, an -- is there a special Arby's line or 14 all of these are kind of Arby's related? 15 A You would do the Arby's when a table was available to 16 do it or a line was available to do it. 17 Q So, like, to be in department 19D, is there a 18 department 19A, B, C -- 19 A No. D is for days. 20 Q Days, okay. So how many 19D shifts are there? 21 A There's one day shift and one night shift. 19N would 22 nights. 23 Q And how many employees are you supervising on 19D? 24 A Full staff would be 52. 25 Q And how about the evening staff?</p>



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<p style="text-align: right;">Page 41</p> <p>1 A That would be less. They might have 30 employees.</p> <p>2 Q And it's all physically located in one area?</p> <p>3 A Correct.</p> <p>4 Q And you have -- as a supervisor, do you have some</p> <p>5 authority to assign who gets to work on what line?</p> <p>6 A Yes. Most jobs are bid on -- or owned. You own the</p> <p>7 job.</p> <p>8 Q And there's also a seniority policy?</p> <p>9 A Correct.</p> <p>10 Q And if you're a union person, how does that work in</p> <p>11 terms of what your job assignments are supposed to be?</p> <p>12 A Well, if you own a job, that is the job you will do.</p> <p>13 Q Okay.</p> <p>14 A Okay? If somebody is -- if you do not own a job,</p> <p>15 you're on what's called open work. So if there's a</p> <p>16 vacancy, somebody's sick, somebody's on vacation, those</p> <p>17 are the jobs you'll fill in on.</p> <p>18 Q And you get to use your seniority to decide what your</p> <p>19 job duty is if you are on open work?</p> <p>20 A You sure could.</p> <p>21 Q As a manager, do you have a right to override people's</p> <p>22 seniority in choosing open work?</p> <p>23 A Yes, you do as in a qualification matter. If you're</p> <p>24 not qualified to do the job, you're not going to do it,</p> <p>25 you know. We could train you to do the job, but for</p>	<p style="text-align: right;">Page 43</p> <p>1 A Adequate for whatever job she was doing.</p> <p>2 Q Were you involved with any sort of the discipline or</p> <p>3 review of the Scott Genzler incident at work with Sala</p> <p>4 and Yvette in a managerial role?</p> <p>5 A No, I wasn't involved with that.</p> <p>6 Q Did you hear about it?</p> <p>7 A I sure did.</p> <p>8 Q How did you find out about it?</p> <p>9 A Through Russ Hultman.</p> <p>10 Q And what did Russ tell you?</p> <p>11 A He told me what Scott had said and what was going to</p> <p>12 happen. You know, he just informed me of the situation</p> <p>13 so I'd know, you know.</p> <p>14 Q Why did he want to tell you so that you would know?</p> <p>15 Why would it be important for you to know this had</p> <p>16 happened?</p> <p>17 MS. CALEM: Object to the form of the question.</p> <p>18 THE WITNESS: Because we're both managers in that</p> <p>19 department, you know. You need to know what the</p> <p>20 situation is in your department.</p> <p>21 BY MS. POCHOP:</p> <p>22 Q So you could keep those employees apart? Or what was</p> <p>23 the -- what was your managerial strategy about how to</p> <p>24 deal with this overt racism?</p> <p>25 MS. CALEM: Object to the form of the question.</p>
<p style="text-align: right;">Page 42</p> <p>1 that particular day, if somebody else is -- you know.</p> <p>2 Q Yeah. If you are angry at an employee, you can assign</p> <p>3 them to go do shit work?</p> <p>4 MS. CALEM: Object to the form.</p> <p>5 THE WITNESS: You could.</p> <p>6 BY MS. POCHOP:</p> <p>7 Q I mean, you're not supposed to under Smithfield policy,</p> <p>8 right?</p> <p>9 A Correct.</p> <p>10 Q Do managers sometimes do that just out of human nature?</p> <p>11 MS. CALEM: Object to the form.</p> <p>12 THE WITNESS: No, they don't.</p> <p>13 BY MS. POCHOP:</p> <p>14 Q Did you have any problems with Sala as an employee</p> <p>15 before this Scott Genzler incident?</p> <p>16 A I don't recall what -- anything specific. We -- no, I</p> <p>17 don't recall anything specific. I guess we'd have to</p> <p>18 look at her record or whatever.</p> <p>19 Q And how would you describe Sala's work performance?</p> <p>20 A She did an adequate job.</p> <p>21 Q And how about Yvette? Did you have any problems with</p> <p>22 Yvette's performance before this incident with Scott</p> <p>23 Genzler about racist behavior?</p> <p>24 A No, not for the most part.</p> <p>25 Q And how would you describe her work performance?</p>	<p style="text-align: right;">Page 44</p> <p>1 THE WITNESS: Well, we had to get our supervisors</p> <p>2 involved, get HR involved, and take it from there.</p> <p>3 BY MS. POCHOP:</p> <p>4 Q So you heard about this incident even before any</p> <p>5 disciplinary action was taken?</p> <p>6 MS. CALEM: Object to the form.</p> <p>7 THE WITNESS: I found out about it, I believe, the</p> <p>8 next Monday when I came back to work. I believe that I</p> <p>9 was back on Monday.</p> <p>10 BY MS. POCHOP:</p> <p>11 Q Did you know that Sala, Yvette, and Lorena Morales were</p> <p>12 disciplined because they went to HR to report what</p> <p>13 Scott Genzler had said and done in the workplace?</p> <p>14 MS. CALEM: Object to the form.</p> <p>15 THE WITNESS: I believe they were disciplined for</p> <p>16 not returning to work after their break and without</p> <p>17 informing anybody.</p> <p>18 BY MS. POCHOP:</p> <p>19 Q Did Russ tell you that they were going to get</p> <p>20 disciplined?</p> <p>21 A I don't believe -- well, after the fact, that we found</p> <p>22 out.</p> <p>23 Q What did he tell you about it?</p> <p>24 A That they had been disciplined for it, got a verbal</p> <p>25 warning, I believe it was.</p>

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<p style="text-align: right;">Page 45</p> <p>1 Q They actually got disciplined before Scott got 2 disciplined, right? 3 MS. CALEM: Object to the form. 4 THE WITNESS: I'm not sure. 5 BY MS. POCHOP: 6 Q Did you know if Scott got any discipline? 7 A I'm sure he did. 8 Q I want to know if you know if he did or not. 9 A Yes, he did. I can't recall exactly what. We'd have 10 to look it up. 11 Q Did Russ talk to you about what kind of discipline 12 Scott should get for this behavior? 13 A I believe Russ was looking to HR to take care of the 14 disciplinary action. 15 Q Do you know why he didn't issue a disciplinary action 16 immediately? I mean, there wasn't any question that 17 this was a violation of a number of Smithfield 18 policies, right? 19 MS. CALEM: Object to the form. 20 THE WITNESS: Yes, it was a violation of 21 Smithfield policies. I believe he called HR on it and 22 he was going to let them handle the disciplinary 23 action. 24 BY MS. POCHOP: 25 Q But my question is to you, your training is, is that</p>	<p style="text-align: right;">Page 47</p> <p>1 Juan engaged in sexual behavior at work? 2 A No, there wasn't. 3 Q Have you ever seen him behaving that way in the 4 workplace? 5 A No, I haven't. 6 Q Have you seen any employees engaged in sexual joking or 7 horseplay? 8 A No, I haven't. 9 Q Like Becky Kaufman, for example? 10 A I have not personally seen it, no. 11 Q Have you heard that Becky is a person who engages in 12 sexual joking around in the workplace? 13 A Nobody's reported it to me, no. 14 Q Have you heard it just in passing? 15 A No, I have not. 16 Q That's kind of news to you? 17 A Yeah. As far as that goes, yes. 18 Q Has anybody reported to you that she uses foul and 19 intimidating language or profanity? 20 A I don't know if they reported it, but I've heard her do 21 it and I have cautioned her before. 22 Q Has she been disciplined by you for using profanity at 23 work? 24 A She has been warned, verbally warned. 25 Q And so when you give a verbal warning, then that goes</p>
<p style="text-align: right;">Page 46</p> <p>1 you could issue -- you just told me you can issue 2 discipline yourself immediately if you witness -- 3 A Uh-huh. 4 Q -- or somebody admits a policy violation, right? 5 A Could. 6 Q So do you know -- Russ would have had the ability to 7 issue a disciplinary action the minute that Scott 8 Genzler said, yeah, I did that, right? 9 A He could have, I believe. 10 Q But he didn't? 11 A I don't know if did he or not. 12 Q What would your training be? Should he have initiated 13 a disciplinary action at that point? 14 MS. CALEM: Object to the form. 15 THE WITNESS: He certainly could have. I don't 16 know what Russ's thinking was at the time. You'd have 17 to ask Russ. 18 BY MS. POCHOP: 19 Q Did you have any participation in the issues that 20 developed between Sala and Yvette and Juan Ogaldez? 21 A Yes. Ogaldez. Yes. 22 Q Were you involved in the initial complaint that Sala 23 had about Juan's sexual behavior at work? 24 A Yes. 25 Q Were there other employees who reported to you that</p>	<p style="text-align: right;">Page 48</p> <p>1 in her personnel file? 2 A Not a written verbal warning. I've talked to her about 3 it. 4 Q Okay. 5 A Okay. 6 Q So how did you decide to -- because I see that 7 employees are disciplined for using profanity in the 8 workplace. 9 A They could be, yes. 10 Q And so tell me -- give me an example of a time when you 11 warned Becky Kaufman not to use language that she had 12 chosen to use. 13 A I can't give you a specific incident. 14 Q How many times has this happened? 15 A I can't tell you that. Once for sure. Okay? 16 Q Okay. So tell me about the one time that you know you 17 talked to her about it. 18 A She was just cussing, and I told her, you know, enough 19 of that -- 20 Q Was she cussing -- 21 A -- and she said okay. 22 Q Was she cussing at another employee? 23 A No. She was just talking -- talking -- probably 24 talking to another employee and I overheard it. That's 25 about it. We don't have to give written warnings for</p>



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<p style="text-align: right;">Page 49</p> <p>1 everything, you know, but...</p> <p>2 Q So that's discretionary?</p> <p>3 A I've heard coarse language there before.</p> <p>4 Q Well, sure. It's a meat-packing plant, right?</p> <p>5 A Well, that's not an excuse, but I -- you know.</p> <p>6 Q And it's true that that's what your training is, is</p> <p>7 just because the work is rough --</p> <p>8 A Right.</p> <p>9 Q -- that the environment is supposed to be professional,</p> <p>10 isn't it?</p> <p>11 A It should be, yes.</p> <p>12 Q Well, I mean, that's what your code of conduct is</p> <p>13 designed to tell employees their obligation is?</p> <p>14 A Correct.</p> <p>15 Q But as a supervisor you have the discretion about who</p> <p>16 you're going to discipline for profanity or rough</p> <p>17 language, right?</p> <p>18 A It depends on the severity of the issue -- of the</p> <p>19 situation.</p> <p>20 Q It sounds to me like a number of -- are you aware if</p> <p>21 Becky has a reputation for using a lot of profanity in</p> <p>22 the course of her job?</p> <p>23 MS. CALEM: Object to the form.</p> <p>24 THE WITNESS: You would have to give me something</p> <p>25 specific. I've heard her cuss before, yes, and I</p>	<p style="text-align: right;">Page 51</p> <p>1 Q Yeah.</p> <p>2 A Never required, no.</p> <p>3 Q So she --</p> <p>4 A I don't know what -- what came first, Scott or Juan.</p> <p>5 How does --</p> <p>6 Q Well --</p> <p>7 A I don't understand.</p> <p>8 Q The incident with Juan, when they were separated</p> <p>9 because of a sexual harassment complaint, came first,</p> <p>10 right, back in 2014?</p> <p>11 A Okay.</p> <p>12 Q And is it your recollection that Sala was told that she</p> <p>13 wasn't going to have to work with Juan?</p> <p>14 MS. CALEM: Objection. Form of the question.</p> <p>15 It's been asked and answered.</p> <p>16 THE WITNESS: I'm not sure I understand the</p> <p>17 question, really.</p> <p>18 BY MS. POCHOP:</p> <p>19 Q Well, you just told me that you had a meeting --</p> <p>20 A Yeah.</p> <p>21 Q -- and she wasn't going to have to work with Juan?</p> <p>22 MS. CALEM: Object to form.</p> <p>23 THE WITNESS: Unless it was absolutely necessary,</p> <p>24 correct.</p> <p>25</p>
<p style="text-align: right;">Page 50</p> <p>1 warned her about it, and -- you know, that's about it.</p> <p>2 BY MS. POCHOP:</p> <p>3 Q So the Juan Ogaldez situation, were you involved when</p> <p>4 the sexual harassment complaint first got addressed in</p> <p>5 2014, I think?</p> <p>6 A Yeah, I believe Sala came to me with it.</p> <p>7 Q And is it true that basically for two years after the</p> <p>8 incident about Juan's sexual gesturing in the workplace</p> <p>9 came up that -- the union was involved in that</p> <p>10 complaint --</p> <p>11 A Oh, I'm sure they were.</p> <p>12 Q -- right?</p> <p>13 And Scott -- or at least Juan and Sala were not</p> <p>14 assigned to work together?</p> <p>15 A Correct. We told -- we told Sala we would not -- we</p> <p>16 did not want her to work there -- or she would not work</p> <p>17 there unless it was absolutely necessary, and during a</p> <p>18 meeting we said it might -- it could possibly happen</p> <p>19 that you'd have to work on that line again if, you</p> <p>20 know, we're that shorthanded or something.</p> <p>21 Q After the Scott Genzler complaint, was Sala required to</p> <p>22 start working with Juan again?</p> <p>23 A After the Scott Genzler --</p> <p>24 Q Right.</p> <p>25 A -- was she required?</p>	<p style="text-align: right;">Page 52</p> <p>1 BY MS. POCHOP:</p> <p>2 Q And somehow it wasn't necessary for at least a year and</p> <p>3 a half?</p> <p>4 A Well, I guess I can't recall when she worked over</p> <p>5 there, unless -- she did work there after that, yes.</p> <p>6 Q And would you have been the person who was responsible</p> <p>7 to assign her to work with Juan? Or is that Russ?</p> <p>8 A Both of us were there, probably. The only time she</p> <p>9 worked with Juan after that was she was on open work.</p> <p>10 So she had seniority to pick her job, and that's the</p> <p>11 job she picked.</p> <p>12 Q And so your position is, is that she selected to work</p> <p>13 with Juan?</p> <p>14 A She did. Well, not work with Juan. Work on the same</p> <p>15 line.</p> <p>16 Q I mean, you know that she actually went -- she was so</p> <p>17 upset about having to work with him that she went and</p> <p>18 tried to get a protective order so she didn't have to</p> <p>19 work with him, right?</p> <p>20 MS. CALEM: Object to the form.</p> <p>21 THE WITNESS: Yeah, it came to our knowledge, yes,</p> <p>22 that she did that.</p> <p>23 BY MS. POCHOP:</p> <p>24 Q Yeah. And, in fact, you got a copy of the protection</p> <p>25 order that she tried to file against Juan, right?</p>

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<p style="text-align: right;">Page 53</p> <p>1 MS. CALEM: Object to the form of the question.</p> <p>2 THE WITNESS: I believe I did, yeah.</p> <p>3 BY MS. POCHOP:</p> <p>4 Q How did you get it?</p> <p>5 A I don't recall, to tell you the truth. Did I get it</p> <p>6 from HR or --</p> <p>7 Q So when I take a look at Exhibit -- what's been marked</p> <p>8 as <u>Exhibit 20</u>, which is a notice of protection order,</p> <p>9 and it says "copy for Gary" at the top -- you can look</p> <p>10 at my copy there -- are you the Gary that would have</p> <p>11 gotten a copy of this protection order?</p> <p>12 A Yeah.</p> <p>13 Q So what did you do, Gary, when you got a copy of a</p> <p>14 protection order for two employees that work on the</p> <p>15 same line in your department?</p> <p>16 MS. CALEM: Object to the form of the question.</p> <p>17 THE WITNESS: What did I do with it?</p> <p>18 BY MS. POCHOP:</p> <p>19 Q Yeah.</p> <p>20 A What did I do about what?</p> <p>21 Q About -- you've got an employee that's filing a</p> <p>22 protection order to keep another employee that you are</p> <p>23 assigning her to work with away from her, right?</p> <p>24 MS. CALEM: Objection to form.</p> <p>25 THE WITNESS: I don't know when she was working</p>	<p style="text-align: right;">Page 55</p> <p>1 MS. CALEM: Object to the form of the question.</p> <p>2 THE WITNESS: I can't force people to speak up.</p> <p>3 Sala spoke up, and we dealt with it.</p> <p>4 BY MS. POCHOP:</p> <p>5 Q And as a result of -- like, she was following the</p> <p>6 policy, wasn't she?</p> <p>7 MS. CALEM: Objection --</p> <p>8 THE WITNESS: Yes, she was. Yes.</p> <p>9 BY MS. POCHOP:</p> <p>10 Q And as a result of speaking up, Sala received a</p> <p>11 disciplinary action?</p> <p>12 MS. CALEM: Object to the form of the question.</p> <p>13 THE WITNESS: For what?</p> <p>14 BY MS. POCHOP:</p> <p>15 Q Let's talk about Scott Genzler. She followed the</p> <p>16 policy and -- she followed the Speak Up policy, didn't</p> <p>17 she?</p> <p>18 A For with Scott Genzler?</p> <p>19 Q Yes.</p> <p>20 A Absolutely, yes.</p> <p>21 Q And she received a disciplinary action, and so did</p> <p>22 Yvette and so did Lorena.</p> <p>23 MS. CALEM: Object to the form.</p> <p>24 THE WITNESS: Not for speaking up.</p> <p>25</p>
<p style="text-align: right;">Page 54</p> <p>1 with Juan again. What day was that?</p> <p>2 BY MS. POCHOP:</p> <p>3 Q Well, I mean, that would be within your control to</p> <p>4 determine, right, in your department?</p> <p>5 MS. CALEM: Object to the form.</p> <p>6 THE WITNESS: I guess I'm not sure when she --</p> <p>7 what the date was that she had to work with Juan again.</p> <p>8 BY MS. POCHOP:</p> <p>9 Q You do know that she complained about that to the</p> <p>10 union, right?</p> <p>11 A All I knew of the situation was Juan -- she was on that</p> <p>12 line for whatever amount of time and we had an incident</p> <p>13 on the line and I had to remove her from the line.</p> <p>14 Q And the incident was about working with Juan, right?</p> <p>15 A Correct.</p> <p>16 Q And this is an employee that you know she has made a</p> <p>17 sexual harassment report about in the past?</p> <p>18 A Correct.</p> <p>19 Q Would it surprise you to know that, like, yesterday</p> <p>20 Lorena Morales described that Juan is a person who</p> <p>21 makes sexual gestures all the time at work?</p> <p>22 A That would surprise me, yes.</p> <p>23 Q What does that tell you about how effective your Speak</p> <p>24 Up enforcement under your management in department 19</p> <p>25 is?</p>	<p style="text-align: right;">Page 56</p> <p>1 BY MS. POCHOP:</p> <p>2 Q For going to HR and not coming back on time.</p> <p>3 A For not being back on time from break without letting</p> <p>4 somebody know that they were going to be gone.</p> <p>5 Q Because they were in the HR department reporting</p> <p>6 harassment, racism, and bullying, right?</p> <p>7 MS. CALEM: Object to the form.</p> <p>8 THE WITNESS: For not being back on time from</p> <p>9 their -- to their jobs and not letting anybody know.</p> <p>10 The line was stopped because nobody knew where they</p> <p>11 were.</p> <p>12 BY MS. POCHOP:</p> <p>13 Q So after they got that disciplinary action, then Sala</p> <p>14 came to you and she spoke up again when you apparently</p> <p>15 reassigned her to work with the person that she had</p> <p>16 reported for sexual harassment before?</p> <p>17 MS. CALEM: Object to the form.</p> <p>18 BY MS. POCHOP:</p> <p>19 Q Right?</p> <p>20 A The fact that she worked over there is because she</p> <p>21 complained she was not getting to use her seniority.</p> <p>22 Okay? So we let her choose her job. That's how she</p> <p>23 ended up over there. She chose to do that job.</p> <p>24 Q And she complained --</p> <p>25 A And she wanted to do that job.</p>



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1 Q And she complained again about Juan touching her?

2 MS. CALEM: Object to the form of the question.

3 THE WITNESS: Not that I recall.

4 BY MS. POCHOP:

5 Q Well, how did she end up getting removed from the line?

6 MS. CALEM: Object to the form.

7 THE WITNESS: There was an incident. Juan came to

8 me and said, she will not do the job right, it's

9 slowing me down, it's making my job harder. So we went

10 and talked to Sala. I explained to her, this is how I

11 want you to do the job. She didn't -- she did not say

12 she wanted off of that job. So I explained to her, you

13 know, exactly how I wanted this job done. Okay. This

14 is how you have to do the job in order to make the line

15 more efficient. And I asked her if she understood.

16 Okay? And she just shrugged her shoulders. I said,

17 now, this is how I want you to do the job. Do you

18 understand? And she just shrugged her shoulders. I

19 said, you don't know what I mean? And it escalated

20 from there a little bit. Tom Anderson got involved

21 and --

22 BY MS. POCHOP:

23 Q The union steward?

24 A Right, from another department. Right. And at some

25 point I just said, well, I'm going to have to take you

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1 off the line. And we assigned her to another job.

2 Q Did she get a disciplinary action --

3 A No, she didn't.

4 Q -- as a result of that incident?

5 A Well, eventually, I believe she did.

6 Q And what was that for?

7 A I don't -- I don't recall. I made some notes on it.

8 So -- I don't have the notes with me.

9 Q Who has the notes?

10 A I think we emailed them to Scott, I believe.

11 Q Is that a --

12 A Just the situation involved, I'm not sure she got

13 disciplined over that. I don't believe she got

14 disciplined over that. I'm not sure.

15 Q So when you got a copy of -- you did get a copy of

16 Exhibit 20 ? Do you recall that? The protection order,

17 is that No. 20?

18 A Oh, this? Okay.

19 Q Are you the Gary who needed a copy?

20 A I'm sure.

21 Q So when you get a copy of this protection order, did

22 you go talk to Sala to try to figure out why she would

23 take out a protection order against a coworker?

24 A No, I did not.

25 Q Did anybody?

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1 MS. CALEM: Object to the form.

2 THE WITNESS: I don't believe they did.

3 BY MS. POCHOP:

4 Q Can you explain why, when I look at the Speak Up policy

5 and the open door policy and the come report policy and

6 we don't tolerate bullying, abusive language, or

7 threats, aggression, and intimidation in the

8 workplace -- can you explain to me why, as a manager,

9 you would not have wanted to know from Sala why she was

10 seeking a protection order against her coworker?

11 MS. CALEM: Object to the form.

12 THE WITNESS: I guess I don't know why she did it.

13 I don't believe Juan returned to work after that.

14 So...

15 BY MS. POCHOP:

16 Q Well, I want to know why you didn't investigate it,

17 because you clearly got a copy of it.

18 A Okay. I -- I -- I don't know why I didn't investigate

19 it.

20 Q That is not consistent with your obligation under the

21 Smithfield code of conduct as a manager, is it?

22 MS. CALEM: Object to the form of the question.

23 THE WITNESS: Well, I don't know if it is or not

24 because I did not -- nobody came to me and served --

25 you know, this was served to Juan, and Juan never

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1 returned to work after that. I guess I'm not really

2 sure why I didn't investigate why she served him with a

3 protection order.

4 BY MS. POCHOP:

5 Q How did you get a copy of it?

6 MS. CALEM: Objection to the form. Asked and

7 answered.

8 THE WITNESS: Did I get this from HR?

9 MS. CALEM: You can't talk to him.

10 THE WITNESS: Oh, I'm sorry.

11 I don't recall. I got it from HR, I believe.

12 BY MS. POCHOP:

13 Q The incident about working with Juan actually resulted

14 in a union grievance, right?

15 MS. CALEM: Object to the form.

16 BY MS. POCHOP:

17 Q Do you recall that?

18 A Incident with Juan?

19 Q Yeah, about Sala complaining that she was being

20 retaliated against by being assigned to work with Juan.

21 A I don't know if there was or not.

22 Q You were involved in several meetings about whether

23 there had actually been any written agreement from the

24 prior sexual harassment complaint about whether they

25 were going to be specifically separated.

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<p style="text-align: right;">Page 61</p> <p>1 MS. CALEM: Object to the form. Was that a 2 question? That was a statement. 3 BY MS. POCHOP: 4 Q Go ahead. 5 A I believe that what we told her, that she would not be 6 assigned to work with Juan unless absolutely necessary. 7 Q Have you -- 8 MS. CALEM: Can we take a break whenever you're at 9 a good stopping point? 10 MS. POCHOP: Yeah. 11 BY MS. POCHOP: 12 Q Have you physically touched Sala to push her to get 13 moving at work? 14 A No. 15 Q Have you said, "Get the fuck out of my way"? 16 A No. 17 Q "Get the fuck moving"? 18 A No. 19 Q Anything that might be interpreted as "get the fuck 20 going"? 21 A No. 22 Q Because you don't talk like that since you got advised 23 by a supervisor not to do that? 24 MS. CALEM: Object to the form. 25 THE WITNESS: Yes, that's true. Yeah.</p>	<p style="text-align: right;">Page 63</p> <p>1 A No, I did not. I reported it as to what it was. 2 MS. CALEM: Can I have a break? 3 MS. POCHOP: Yeah, yeah. Sorry. I didn't mean 4 to -- 5 (Recess taken from 9:57 a.m. to 10:12 a.m.) 6 BY MS. POCHOP: 7 Q I'm almost completed here. Famous last words by a 8 lawyer, I know, but -- 9 So I wanted just to clarify. It looks like, by my 10 timeline, that in March -- February and March of 2016 11 there was the incident with Scott Genzler and the 12 follow-up disciplinary actions that, at least as a 13 manager, you were being consulted and informed about, 14 right? 15 A I believe that's right. 16 Q Were Scott and Sala to be separated because of that -- 17 and Yvette, because of that incident? 18 A I don't recall what the disciplinary had called for. 19 Q Were you ever informed that Sala, Yvette, and Lorena 20 were not going to be disciplined after they received an 21 incident for going to HR and not coming back? 22 A I was informed that they were going to take the 23 discipline back. 24 Q And what was the reason that you were informed that the 25 discipline was being revoked?</p>
<p style="text-align: right;">Page 62</p> <p>1 BY MS. POCHOP: 2 Q Are you the supervisor that suggested that Sala should 3 be disciplined for calling you a racist? 4 A I reported that she called me a racist. The discipline 5 wouldn't fall on my shoulders. It could, but -- I 6 reported that she did, yes. 7 Q Is it a violation of Smithfield policy for an employee 8 to say somebody's racist? 9 A I don't know if it is or not. 10 Q So why did you report it? 11 A Why did I report it? 12 Q Yeah. 13 A I didn't like it. I don't like being called a racist. 14 There was -- 15 Q Do you know why you were called a racist? 16 MS. CALEM: Object to the form. 17 THE WITNESS: No, I don't, actually. 18 BY MS. POCHOP: 19 Q As a manager, you think that saying somebody is a 20 racist is a violation of a policy? 21 MS. CALEM: Object to the form. 22 THE WITNESS: It offended me. 23 BY MS. POCHOP: 24 Q And it was offensive enough that -- did you request 25 discipline?</p>	<p style="text-align: right;">Page 64</p> <p>1 A I'm not really sure if it was the union request or what 2 it was. 3 Q Who told you that? 4 A Told me what? 5 Q That the discipline was being removed. 6 A I don't recall who told me personally, no. 7 Q Was it HR, or did you just hear it through the 8 grapevine? 9 A Well, it came from HR. 10 Q And then were you ever investigated by HR in 2016 about 11 your language and intimidating treatment of Sala and 12 Yvette or Sala or Yvette? 13 MS. CALEM: Object to the form. 14 THE WITNESS: No. 15 BY MS. POCHOP: 16 Q And then in December you reported Sala to -- well, in 17 the meantime, there was a -- strike that. 18 In December you initiated a disciplinary action 19 against Sala, two on the same day; is that accurate? 20 MS. CALEM: Object to the form. 21 THE WITNESS: I don't know what -- I'd have to see 22 what -- 23 BY MS. POCHOP: 24 Q I'm going to show you what's been marked as Exhibit 31. 25 We've got two disciplinary actions on the same day for</p>



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<p style="text-align: right;">Page 65</p> <p>1 Sala, right, for a total of 10 days of suspension? Is 2 that ringing a bell now? 3 A The first one is a seven-day suspension. The other one 4 looks like three days. 5 Q And the seven-day -- were you the supervisor who was 6 keeping track of her attendance? 7 A I was her supervisor at the time, I believe. 8 Q And do you have some discretion about how you address 9 attendance issues as a supervisor? 10 A It's a progressive system. You miss so many days, you 11 get a warning. It starts with a verbal, written, 12 three-day suspension, seven-day suspension, and it 13 could be up to and including discharge after that. 14 Q So she was -- 15 A So -- 16 Q The next step after this would have been discharge? 17 A It's possible. Probably not likely. 18 Q Do you know of any other employees who've gotten a 19 10-day suspension like Sala did in December of 2016? 20 A No, I don't -- in December of '16, on that day, any 21 other employees? 22 Q Any other employees ever had this type of disciplinary 23 action where they get two separate disciplinary actions 24 on the same day for a suspension like the one that was 25 issued to Sala in December of 2016?</p>	<p style="text-align: right;">Page 67</p> <p>1 THE WITNESS: It would be, but I just don't 2 recall. I don't recall it. 3 BY MS. POCHOP: 4 Q So in December of 2016, we have this disciplinary 5 action. Were you aware that Sala and Yvette had filed 6 an EEO charge about their work environment, claiming it 7 was discriminatory and retaliatory? 8 MS. CALEM: Object to the form. In December 2016? 9 MS. POCHOP: At any point. 10 MS. CALEM: Okay. 11 THE WITNESS: I'm not sure when I found out. 12 BY MS. POCHOP: 13 Q Did somebody from HR tell you that there was an EEO 14 investigation into discrimination and retaliation in 15 your department by Sala and Yvette? 16 A I would guess that's where it came from, but I don't 17 recall, you know. 18 Q Do you recall when Sala was -- and Yvette, missed work 19 to attend a mediation with several members of HR, with 20 the EEOC in 2017? 21 A No, I do not. 22 Q Do you know -- if I understand correctly, Juan's job -- 23 Juan was a member of the union? 24 A I don't know if he was or not. 25 Q Okay. His job that he bid was on the Great Bend line?</p>
<p style="text-align: right;">Page 66</p> <p>1 MS. CALEM: Object to the form of the question. 2 THE WITNESS: Well, I'm not -- no. Not 3 personally, no. 4 BY MS. POCHOP: 5 Q And this three-day suspension for "called supervisor a 6 racist," that's the complaint that you made, right? 7 A I reported it. 8 Q Were you offended by Sala's comment to you? 9 A Yes, I was. 10 Q Were you angry at her for saying that about you? 11 A I wasn't happy with her, no. 12 Q Right. And were you ever told that this disciplinary 13 action was reduced or revoked? 14 A I don't recall. 15 Q So if I show you <a href="#">Exhibit 41</a>, it says that it was 16 reduced. Have you ever seen that before, <a href="#">Exhibit 41</a>? 17 A I don't believe I have. 18 Q Did anybody in HR talk to you about the fact that the 19 disciplinary action that you had triggered about 20 yourself was going to be reduced? 21 A I don't recall. 22 Q As her supervisor, that would be something that you 23 would need to know to be able to enact the step 24 discipline policy, right? 25 MS. CALEM: Object to the form.</p>	<p style="text-align: right;">Page 68</p> <p>1 A That is correct, yeah. 2 Q And that was his assigned job? 3 A That was his bid job. 4 Q Right. And yet the day after the EEO mediation, he was 5 assigned to come over and work on Sala's line, right? 6 MS. CALEM: Object to the form. He said he 7 doesn't know when the mediation was. Lacks foundation. 8 THE WITNESS: I don't recall what -- who did what 9 what date three years ago. 10 BY MS. POCHOP: 11 Q Right. Because if Juan has a bid job on Great Bend, 12 that's where he's supposed to stay, right? 13 A Correct. 14 Q Sala's the person with the open position? 15 A All right. 16 Q Right? 17 A Okay. 18 Q Well, is that accurate or not? 19 A That Juan moved over to her line to work? 20 Q Just in general. If she's the person in your 21 department with the open position, she's the person who 22 is supposed to go fill open jobs, right? 23 A Correct. Yeah. She would be assigned a job or she 24 could pick a job. 25 Q Right.</p>



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<p style="text-align: right;">Page 69</p> <p>1 A And that's where she would go.</p> <p>2 Q And yet Juan, who had a bid job, was moved over to</p> <p>3 Sala's line. That isn't really how it's supposed to</p> <p>4 work, is it?</p> <p>5 MS. CALEM: Object to the form.</p> <p>6 THE WITNESS: It's possible that he could have</p> <p>7 been.</p> <p>8 BY MS. POCHOP:</p> <p>9 Q And how would that work under your policies where he</p> <p>10 has a bid and assigned job?</p> <p>11 A It would work if he was qualified to do a job on that</p> <p>12 line and we were shorthanded there and he would have to</p> <p>13 do it, you know.</p> <p>14 Q So it's a coincidence that the day after the EEO</p> <p>15 mediation that he was assigned to work over -- he was</p> <p>16 assigned over to the ham line?</p> <p>17 MS. CALEM: Object to the form. Lacks foundation.</p> <p>18 He said he didn't know the date of the mediation.</p> <p>19 THE WITNESS: I don't know what job you're talking</p> <p>20 about. What job was he assigned to?</p> <p>21 BY MS. POCHOP:</p> <p>22 Q The one that resulted in a union grievance and a</p> <p>23 protection order.</p> <p>24 MS. CALEM: Object to the form.</p> <p>25 THE WITNESS: What job specifically was he</p>	<p style="text-align: right;">Page 71</p> <p>1 the chest with a ham, and it looks like that was in</p> <p>2 2017, in August. Are you familiar with that?</p> <p>3 A I don't recall it, no.</p> <p>4 Q Should Sala have spoken up about Russ's inappropriate</p> <p>5 comment under the Smithfield policy?</p> <p>6 MS. CALEM: Object to the form.</p> <p>7 THE WITNESS: Did she?</p> <p>8 BY MS. POCHOP:</p> <p>9 Q Should she? Was it her responsibility as an employee?</p> <p>10 A Absolutely. She should have.</p> <p>11 Q Should she have spoken up about being hit in the chest</p> <p>12 with a ham?</p> <p>13 A Oh, yes.</p> <p>14 Q Was there -- that was a legitimate report, right?</p> <p>15 MS. CALEM: Object to the form.</p> <p>16 THE WITNESS: I do not recall the specific --</p> <p>17 BY MS. POCHOP:</p> <p>18 Q Did the department change its procedure and prohibit</p> <p>19 employees from throwing hams that way after Sala's</p> <p>20 report?</p> <p>21 A No, there was no --</p> <p>22 Q Then there was an incident in September of 2017 where</p> <p>23 Sala reported that she had been sprayed with water and</p> <p>24 that Russ had touched her when he was squeezing by her.</p> <p>25 You're familiar with that incident, right?</p>
<p style="text-align: right;">Page 70</p> <p>1 assigned to, do you know? Because I don't recall who</p> <p>2 did what, I mean, on any given day years ago.</p> <p>3 BY MS. POCHOP:</p> <p>4 Q And then Russ was disciplined for making inappropriate</p> <p>5 comments and spraying Sala with water in 2017. You're</p> <p>6 familiar with that?</p> <p>7 MS. CALEM: Object to the form.</p> <p>8 THE WITNESS: Yes.</p> <p>9 BY MS. POCHOP:</p> <p>10 Q And were you upset about your coworker -- your</p> <p>11 co-supervisor being disciplined?</p> <p>12 A I wouldn't say I was upset about it.</p> <p>13 Q Did you think he should be disciplined?</p> <p>14 MS. CALEM: Object to the form.</p> <p>15 THE WITNESS: Did I think he should be</p> <p>16 disciplined? No, I did not.</p> <p>17 BY MS. POCHOP:</p> <p>18 Q Did you think his comments to Sala were inappropriate</p> <p>19 about -- touching her and making a comment about her</p> <p>20 partner being gone, what was she going to do?</p> <p>21 MS. CALEM: Object to the form.</p> <p>22 THE WITNESS: Yes, I guess I'd call that</p> <p>23 inappropriate.</p> <p>24 BY MS. POCHOP:</p> <p>25 Q And then there was an incident where Sala was hit in</p>	<p style="text-align: right;">Page 72</p> <p>1 A Yes.</p> <p>2 Q Did you think that he should be disciplined for that?</p> <p>3 MS. CALEM: Object to the form.</p> <p>4 THE WITNESS: I did not think he should have been</p> <p>5 disciplined. No, I did not.</p> <p>6 BY MS. POCHOP:</p> <p>7 Q Did you think Sala, as a Smithfield employee with the</p> <p>8 Speak Up policy, should have reported her concerns</p> <p>9 about what she perceived to be a policy violation when</p> <p>10 Russ sprayed her with water and squeezed past her in a</p> <p>11 way that made her physically uncomfortable?</p> <p>12 MS. CALEM: Object to the form.</p> <p>13 THE WITNESS: If that made her uncomfortable, I</p> <p>14 think she should have reported it, yes.</p> <p>15 BY MS. POCHOP:</p> <p>16 Q Would that be her responsibility under the policies?</p> <p>17 A Yes.</p> <p>18 Q So there wasn't anything wrong with Sala making these</p> <p>19 reports?</p> <p>20 A No.</p> <p>21 Q And, in fact, you're supposed to encourage them, aren't</p> <p>22 you?</p> <p>23 A Correct.</p> <p>24 Q Was Sala disciplined by you for chewing gum?</p> <p>25 A Yes, she was.</p>



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<p style="text-align: right;">Page 73</p> <p>1 Q Have you disciplined any other employees in your 2 department for chewing gum? 3 A Yes. 4 Q Who? 5 A I don't recall anybody specific. 6 Q When would you have issued discipline for somebody 7 chewing gum in your department? 8 A I don't believe I issued a write-up for her for chewing 9 gum. I told her to spit it out. 10 Q And anybody else who -- 11 A Anybody else I see chewing gum, I tell them to spit it 12 out. 13 Q Are you a person who, like, gets, like, really close up 14 and talks close in people's faces? 15 A No. 16 Q Were you involved in disciplining Sala for taking a 17 photo at work in 2018? 18 A I don't believe I disciplined her for taking a photo. 19 Q Do you have employees who bring their electronic media 20 into the workplace? 21 A I have seen people with their cell phones, yes. 22 Everybody's got to have their cell phone. So... 23 Q Right. Have you disciplined anybody for having their 24 cell phones? 25 A I believe there was an employee that was disciplined</p>	<p style="text-align: right;">Page 75</p> <p>1 A I believe he just wanted to move people around, get 2 cross-training done, get some people some -- get some 3 new blood into departments. 4 Q So anything that happened after you left you haven't 5 been involved in? 6 A No. 7 Q If somebody calls somebody a gossip at work, is that 8 something that should be reported under the code of 9 conduct? 10 MS. CALEM: Object to the form. 11 THE WITNESS: I don't believe gossip should be 12 spread around, no. I guess if you want to report it, 13 you're more than welcome to and we'll look into it, you 14 know. 15 BY MS. POCHOP: 16 Q Well, I'm just wondering, because if somebody is 17 disciplined for calling somebody a racist, is it on the 18 same -- is that the same standard, like, if you were 19 called a gossip or you're referred to in a slang term 20 that you think is a slur, under the Speak Up policy, is 21 it an employee responsibility to report that? 22 A You sure could. 23 Q Was Russ upset about being disciplined about Sala's 24 complaint? 25 MS. CALEM: Object to the form. Calls for</p>
<p style="text-align: right;">Page 74</p> <p>1 for that. 2 Q Who is that? 3 A I believe it was Ozie Townsend. 4 Q Because he had an iPad or iPod or something at work and 5 was taking pictures? 6 A I believe Sala complained that he took a picture of her 7 with his cell phone is what I understood. 8 Q Were you involved in a conflict that developed between 9 Abegail and Sala in April of 2018 when they were 10 calling each other old or something like that? 11 A No. I wasn't in that department then. 12 Q You weren't in the department then? 13 A No. 14 Q When did you move out of the department? 15 A Last part of March of '18. 16 Q And where did you go? 17 A Different department. 18 Q Which department? 19 A 26. 20 Q What is that? Is that canning? 21 A Bacon. 22 Q And how did you come to move over to the bacon 23 department in 2018? 24 A My supervisor moved -- switched us around. 25 Q Was it a disciplinary --</p>	<p style="text-align: right;">Page 76</p> <p>1 speculation. 2 THE WITNESS: I guess you'd have to ask Russ, but 3 I imagine he probably was. 4 BY MS. POCHOP: 5 Q You and Russ didn't discuss this at all? 6 A We had some words about it probably. 7 Q Tell me what you and Russ discussed about Sala's 8 complaint about him. 9 A What he told me was he had no intention of touching her 10 or spraying her with water. His main concern was 11 getting the line going again because the line had been 12 down for most of the day and it needed to be washed up 13 before we started again. 14 Q Did he tell -- 15 A That was his priority as to -- he wasn't trying to 16 spray anybody with water. It's just something that 17 happened. But he would -- you know. And, you know, he 18 didn't mean to touch her. It was a small, confined 19 space, and he was trying to get through to get -- 20 Q So he told you -- 21 A And that's what he told me happened. He just told me 22 what happened is all. 23 Q He told you he was just -- he just brushed her because 24 he was trying to get through a small space? 25 A It just happened is what he told me. He said he didn't</p>

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<p style="text-align: right;">Page 77</p> <p>1 try to touch anybody or wasn't trying to, you know, 2 molest anybody in any way, shape, or form. 3 Q So the physical contact -- he did tell you that he had 4 physical contact with her? 5 A He said if it happened, he -- you know, it happened, 6 but it wasn't his intent to touch her intentionally. 7 MS. POCHOP: Well, I appreciate your time today, 8 and I don't think I have any further questions. 9 MS. CALEM: So I have a few follow-up questions 10 for you, and I will try not to take a long time. 11 EXAMINATION 12 BY MS. CALEM: 13 Q So you're talking about your use of the F-word and 14 being told by Dave Hillberg not to do it. 15 Have you intentionally directed that word at an 16 employee to talk to them? 17 A No, it -- there's situations where if -- it was at a 18 situation probably where a machine would break down 19 constantly and constantly and it would be, what the F 20 is going on, you know, something like that, you know, 21 and -- 22 Q And you would do that in front of other employees, 23 correct? 24 A Yeah, I'm sure it happened. 25 Q Did you ever curse at Sala and say "fuck you" or</p>	<p style="text-align: right;">Page 79</p> <p>1 work and -- 2 Q Are you aware that Becky Kaufman got a written warning 3 for saying "fuck you" to Sala? 4 A I guess I don't recall that. 5 Q You said that Sala came to you with a complaint about 6 Juan Ogaldez in 2014? 7 A Correct. 8 Q Can you tell me what you remember about that and what 9 you did? 10 A Well, I think she didn't want to work on that line that 11 day. Can't remember the job she was doing. And so I 12 believe we put her on another line, and then she was -- 13 just kept saying, I'm not a ho, I'm not a ho, and I'm 14 like -- you know, I didn't know how to respond because 15 she's, you know, making a statement like that. And, 16 you know, what are you talking about? What's going on? 17 And then she told me what Juan had said, or supposedly 18 said or did. And I said, well, I'm going to get to the 19 bottom of this right now. So... 20 Q I'm sorry. You said what? 21 A We'll get to the bottom of this right now. So... 22 Q Did you speak to people to investigate what had 23 happened? 24 A Yes, we did. 25 Q Did you have assistance from human resources in doing</p>
<p style="text-align: right;">Page 78</p> <p>1 anything to that effect? 2 A No, I did not. 3 Q You might have used the F-word in front of her in 4 reference to a machine? 5 A Yeah, it's pretty possible. 6 Q In fact, were you aware that Sala told HR that you 7 cursed when a machine broke down? 8 A I wasn't aware of that. 9 Q Have you ever heard Sala use the F-word? 10 A Yes, I have. 11 Q In what context? 12 A She had a lot of confrontations with employees on the 13 line. Lamar, for one, and there was another employee, 14 Ozie, she would be confrontational with them, and -- 15 and while it was going on, I'd get up and I'd say, 16 that's enough of this, no more. And the F-word was 17 flying around. I said, enough, you two stop it right 18 now. If you can't get along, don't talk to each other. 19 Basically, that's about it. 20 Q Did you ever discipline Sala for using that word? 21 A No. I just told them quit it, don't even talk to each 22 other, just get to work, you're not here to -- not here 23 to fight, you're here to work, get the job done, and 24 this is creating problems. So... 25 And they would settle down, and they'd get back to</p>	<p style="text-align: right;">Page 80</p> <p>1 that? 2 A I believe the initial one was in the office. We got 3 everybody in there and asked them what they seen, 4 heard, what they know, you know, because she was 5 claiming there was witnesses, and so we got them in 6 there. 7 And it eventually went down to HR, yes. 8 Q Did anybody corroborate that they had seen Juan do this 9 to her? 10 A I don't believe that they did -- 11 Q Did anyone else -- 12 A -- during our initial meetings. I believe Dave was in 13 there, and he was taking notes. 14 Q Dave Hillberg? 15 A Right. Dave or -- yeah, I believe Dave was. Dave or 16 Steve. I don't recall. I believe I took notes on it 17 also. 18 Q All right. The incident on the line where you said 19 Juan came to you and had a complaint about Sala and you 20 wrote something up about it, I'm going to show you -- 21 and we can mark this, an email from you to Dave 22 Hillberg -- 23 A Okay. 24 Q -- which he then forwarded to Scott Reed -- and ask if 25 you recognize this.</p>



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<p style="text-align: right;">Page 85</p> <p>1 Q Do you recall if the deli line was down that day and</p> <p>2 Lorena Morales came and bumped Sala on the -- on her</p> <p>3 socks job on the honey line?</p> <p>4 A I don't recall what the deal was, to tell you the</p> <p>5 truth.</p> <p>6 Q On that day, in this incident, did Sala refer to Juan</p> <p>7 Ogaldez as the reason why she didn't want any</p> <p>8 particular job?</p> <p>9 A No, I don't recall, because the job I think she was --</p> <p>10 we were offering her wasn't on the line.</p> <p>11 Q With regard to Juan Ogaldez, Stephanie asked you a</p> <p>12 number of questions about this protective order and</p> <p>13 your response to it.</p> <p>14 Had Sala -- between 2014 and the time you learned</p> <p>15 about this protective order, had Sala complained to you</p> <p>16 that Juan was sexually harassing her in any way?</p> <p>17 A I would say after --</p> <p>18 Q After 2014.</p> <p>19 A After her original first complaint about it, no.</p> <p>20 Q Did anybody tell you that Juan was behaving</p> <p>21 inappropriately towards Sala after her original</p> <p>22 complaint?</p> <p>23 A No.</p> <p>24 Q Did you observe Juan do anything inappropriate towards</p> <p>25 Sala after her original complaint?</p>	<p style="text-align: right;">Page 87</p> <p>1 a protection order against him?</p> <p>2 MS. CALEM: Object to the form. He called Juan to</p> <p>3 ask why he wasn't at work, not about the protective</p> <p>4 order.</p> <p>5 MS. POCHOP: That's not what I asked, and that's</p> <p>6 not a proper objection in South Dakota.</p> <p>7 THE WITNESS: No, I didn't feel it was -- it was a</p> <p>8 personal thing between him and her and the sheriff is</p> <p>9 what I thought. Why would I investigate it?</p> <p>10 BY MS. POCHOP:</p> <p>11 Q Why would you call him at home?</p> <p>12 A Because I knew Juan and I was wondering why he wasn't</p> <p>13 coming to work. I had given Juan rides to work in the</p> <p>14 past, and I had his phone number, and he lived on the</p> <p>15 way there. Because, before he got a vehicle, he walked</p> <p>16 to work, and it was a good 3, 4 miles in the</p> <p>17 wintertime, and he asked me for -- if I could pick him</p> <p>18 up sometimes, and I did.</p> <p>19 Q So it's true that after Sala made the sexual harassment</p> <p>20 complaint, there weren't any complaints between Sala</p> <p>21 and Juan until they were assigned to start working</p> <p>22 together again in 2016 and '17, right?</p> <p>23 MS. CALEM: Object to the form.</p> <p>24 THE WITNESS: They weren't assigned together. She</p> <p>25 chose to work there, and I let her work there. It</p>
<p style="text-align: right;">Page 86</p> <p>1 A No, I did not.</p> <p>2 Q Did you have any reason to believe that Juan was</p> <p>3 sexually harassing Sala after that day in 2014 when you</p> <p>4 conducted your investigation?</p> <p>5 A No, I did not have any -- I didn't see anything of that</p> <p>6 order at all.</p> <p>7 Q Did human resources ask you to conduct an investigation</p> <p>8 into Sala's protective order?</p> <p>9 A No.</p> <p>10 Q Is it true that Juan lost his job because he was not</p> <p>11 coming to work because of the protective order?</p> <p>12 A I did call Juan at home and asked him what the deal</p> <p>13 was, how come you're not coming to work, and he told me</p> <p>14 because he had a protection order against him and the</p> <p>15 sheriff had come to his door and told him that he could</p> <p>16 be arrested and thrown in jail if he came within a</p> <p>17 certain distance of her.</p> <p>18 Q Do you know how long it took Juan to find another job?</p> <p>19 A No, I don't.</p> <p>20 MS. CALEM: All right. Nothing further.</p> <p>21 FURTHER EXAMINATION</p> <p>22 BY MS. POCHOP:</p> <p>23 Q So you actually called Juan about the protection order?</p> <p>24 A Yeah, I knew Juan.</p> <p>25 Q And you still didn't ask Sala about why she was seeking</p>	<p style="text-align: right;">Page 88</p> <p>1 wasn't an assignment.</p> <p>2 BY MS. POCHOP:</p> <p>3 Q And one of her complaints, which was addressed to you</p> <p>4 through the union and Tom Anderson, was that it's close</p> <p>5 proximity in that department and they had to work very</p> <p>6 physically close to each other and that made her</p> <p>7 uncomfortable, right?</p> <p>8 MS. CALEM: Object to the form.</p> <p>9 THE WITNESS: I don't know what was said</p> <p>10 specifically in --</p> <p>11 BY MS. POCHOP:</p> <p>12 Q They were required to work very physically close to</p> <p>13 each other.</p> <p>14 MS. CALEM: Object to the form.</p> <p>15 THE WITNESS: Yes, they would be -- the job that</p> <p>16 she was doing, she was working behind Juan. Juan's</p> <p>17 back would have been to her.</p> <p>18 BY MS. POCHOP:</p> <p>19 Q And you knew because she had said, I'm not a ho, I'm</p> <p>20 not a ho, that she was uncomfortable about being around</p> <p>21 Juan, right?</p> <p>22 MS. CALEM: Object to the form.</p> <p>23 THE WITNESS: I would imagine so, but I -- you</p> <p>24 know, I didn't question her when she was complaining</p> <p>25 that she wasn't getting to use her seniority to pick</p>